

EXHIBIT E



1 VOLUME 1
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4 UNITED STATES DISTRICT COURT
 5 FOR THE DISTRICT OF MINNESOTA

6 _____)
 7 IN RE:) No. 0:18-cv-01776-JRT-HB
 8)
 9 PORK ANTITRUST LITIGATION)
 10 _____)
 11)
 12)

13 VIDEOTAPED DEPOSITION of CHRISTOPHER DEERY
 14 - CONDUCTED BY VIDEOCONFERENCE -
 15 Tuesday, March 29, 2022
 16 9:00 a.m. Central Standard Time

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 18
 19
 20
 21
 22 Michelle Keegan, RMR, CRR
 23 Lexitas
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 12 USDC, District of Minnesota,
 13 18-cv-1776 (JRT/HB), 167 pages
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 14 Exhibit 3 Images of receipts, 33 pages 65
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 21 Exhibit 5 Images of grocery products and 124
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1 P R O C E E D I N G S
 2 THE VIDEOGRAPHER: Good morning. We are
 3 on the record on March 29, 2022, at approximately
 4 9:00 a.m. Central Time, for the remote video
 5 deposition of Mr. Chris Deery in the matter of In
 6 Re: Pork Antitrust Litigation.
 7 My name is Jacob Figueroa. I am the
 8 videographer on behalf of Lexitas.
 9 Will counsel please introduce themselves
 10 for the record, who they represent, beginning with
 11 the party noticing this proceeding.
 12 MS. WALL: Thank you. This is Amanda Wall
 13 with Husch Blackwell for Triumph Foods.
 14 MR. AMARA: Abou Amara, Gustafson Gluek,
 15 on behalf of the witness and on behalf of the
 16 consumer indirect purchaser plaintiffs.
 17 THE VIDEOGRAPHER: Would the court
 18 reporter please swear in the witness.
 19
 20 CHRISTOPHER DEERY,
 21 having been satisfactorily identified and duly
 22 sworn by the Notary Public, was examined and
 23 testified as follows:
 24
 25

1 **A. Yeah. We don't really have those here.**
 2 **It's usually, like, lettuce, carrots, vegetables,**
 3 **produce like that.**
 4 Q. And we talked about Costco and Sam's Club.
 5 So is it correct that you're a member of both
 6 Costco and Sam's Club?
 7 **A. Yes.**
 8 Q. Do you know about how long you've been a
 9 member of Costco?
 10 **A. Not offhand. No.**
 11 Q. Were you a member of Costco in 2008?
 12 **A. I can't recall.**
 13 Q. Do you believe you were a member of Costco
 14 sometime within the time frame of 2008 to 2018?
 15 **A. Yes.**
 16 Q. What about your Sam's Club membership? Do
 17 you recall when you started that?
 18 **A. I don't, but it would be in the same time**
 19 **frame.**
 20 Q. Have you ever bought pork products from a
 21 convenience store?
 22 **A. No. That's not a thing here.**
 23 Q. What about a butcher or a specialty shop?
 24 **A. No.**
 25 Q. Dollar Store?

1 **A. No.**
 2 Q. Other than the grocery stores we've
 3 discussed, is there anywhere else retail storewise
 4 that you purchased pork products?
 5 **A. No. Just the ones we've discussed.**
 6 Q. Between 2008 and 2018, did you purchase
 7 pork products from restaurants?
 8 **A. Yes. Like going out to eat?**
 9 Q. Yes.
 10 **A. Yes.**
 11 Q. What restaurants?
 12 **A. I mean, like Texas Roadhouse or something**
 13 **to that effect. I don't know.**
 14 Q. Okay. At Texas Roadhouse, what pork
 15 product do you purchase from them?
 16 **A. Pork chop.**
 17 Q. I'm sorry. Did I miss your answer?
 18 **A. Pork chop.**
 19 Q. Any other restaurants that come to mind?
 20 **A. We'd be here all week. No. Like Chili's,**
 21 **TGI Friday's. There's a lot. We could go down**
 22 **the list.**
 23 Q. What kind of pork products would you eat
 24 at Chili's?
 25 **A. It would be like a pork tenderloin, pork**

1 **sandwich, pulled pork.**
 2 Q. What about TGI Friday's?
 3 **A. Same. Barbecue pork, pork chop.**
 4 Q. How often would you say you eat out at
 5 restaurants?
 6 **A. Probably once a week.**
 7 Q. Was that also true in 2008 to 2018?
 8 **A. Yes.**
 9 Q. And when you eat out at a restaurant
 10 approximately once a week, how often would you say
 11 you purchase some type of pork product?
 12 **A. Quite a bit.**
 13 Q. More than half the time you go out?
 14 **A. I'd probably say 75 percent of the time.**
 15 Q. Are the restaurants that we discussed, are
 16 those all located in Fargo?
 17 **A. Correct.**
 18 Q. Have you on occasion ate at a restaurant
 19 outside of North Dakota?
 20 **A. Yes.**
 21 Q. Would that be when you're traveling,
 22 vacation, things like that?
 23 **A. Yes.**
 24 Q. What about fast food establishments? Are
 25 there any fast food that you purchase pork at?

1 **A. No.**
 2 Q. Have you ever purchased pork through a
 3 meal delivery kit like Blue Apron?
 4 **A. No.**
 5 Q. Have you ever purchased pork straight from
 6 the farm?
 7 **A. No.**
 8 Q. Or from a wholesaler?
 9 **A. No.**
 10 MS. WALL: All right. I think this is a
 11 good time for a break if that works for you,
 12 Mr. Deery and Mr. Amara.
 13 MR. AMARA: That works.
 14 MS. WALL: Okay. How long do you want to
 15 take?
 16 THE VIDEOGRAPHER: The time is 10:14 a.m.
 17 We are going off the record.
 18 (Recess from 10:14 a.m. to 10:28 a.m.)
 19 THE VIDEOGRAPHER: The time is 10:28 a.m.
 20 We are back on the record.
 21 BY MS. WALL:
 22 Q. Mr. Deery, we're back on the record. And
 23 you understand you are still under oath. Correct?
 24 **A. Correct.**
 25 Q. All right. You testified that you believe

1 there's a conspiracy among industry participants
2 in the pork industry to increase the price of pork
3 based on your observations in grocery stores. Do
4 you recall testifying to that?

5 **A. Yes.**

6 MR. AMARA: Objection, form.

7 **A. Yes.**

8 Q. And your observation that pork prices
9 increased was based off of your observations in
10 grocery stores. Correct?

11 **A. It wouldn't be observations. It would be**
12 **I actually bought the product.**

13 Q. But your observation that prices of pork
14 products increased was based off of your firsthand
15 knowledge purchasing pork products in grocery
16 stores. Is that fair?

17 MR. AMARA: Objection, misstates prior
18 testimony.

19 **A. I guess can you ask the question again?**
20 **I'm not sure what you're asking.**

21 Q. Sure. Your observation that pork prices
22 increased is based off of your firsthand knowledge
23 purchasing pork products in grocery stores?

24 MR. AMARA: Objection to form.

25 **A. Yes.**

1 Q. And you attribute the increase in pork
2 products to pork companies; for example,
3 Smithfield or Tyson. Correct?

4 MR. AMARA: Objection, form.

5 **A. And others. But yes.**

6 Q. What is your specific factual basis for
7 attributing the increase in pork prices to these
8 pork companies?

9 MR. AMARA: Objection to form.

10 **A. Being a consumer in North Dakota, shopping**
11 **in those grocery stores.**

12 Q. Other than being a consumer, do you have
13 any other factual basis for attributing the
14 increase of pork prices to pork companies?

15 MR. AMARA: Objection to form.

16 **A. Just what I supplied to my counsel.**

17 Q. What was that that you supplied? Are you
18 referring to the receipts?

19 **A. Correct.**

20 Q. Anything else that you supplied?

21 **A. No, ma'am.**

22 Q. Do you attribute any part of the increase
23 in pork products to the grocery store itself?

24 MR. AMARA: Objection, calls for
25 speculation.

1 **A. I don't know.**

2 Q. Is it possible that the increase of pork
3 was based off the grocery store increasing the
4 price of pork?

5 MR. AMARA: Objection, calls for
6 speculation. "Possible."

7 **A. I don't know.**

8 Q. All right.

9 MS. WALL: We are going to turn again to
10 what we marked as Exhibit 2, the complaint. Let's
11 turn to page 103. And we're going to be looking
12 at Paragraph 219.

13 Q. Let me know when you get there.

14 **A. Okay.**

15 Q. Okay. So Paragraph 219 reads, "Plaintiff
16 Chris Deery was a resident at all relevant times
17 of Fargo, North Dakota. During the Class Period
18 and while residing in North Dakota, plaintiff
19 Deery indirectly purchased pork and pork products
20 for his own use and not for resale that was
21 produced by one or more defendants or their
22 co-conspirators. Plaintiff Deery suffered injury
23 as a result of defendants' conduct alleged
24 herein."

25 Do you see where I read that?

1 **A. Yes.**

2 Q. And did I read that correctly?

3 **A. Yes.**

4 Q. Which defendants or coconspirators did you
5 purchase pork from between 2008 and 2018?

6 MR. AMARA: Objection, foundation.

7 **A. Hormel, Smithfield, Tyson, just to name a**
8 **few.**

9 Q. Any others that come to mind?

10 **A. No, ma'am.**

11 Q. Can you tell me as a matter of fact that
12 the prices of pork between -- sorry -- the prices
13 of pork produced by defendants or the
14 coconspirators increased between 2008 to 2018?

15 MR. AMARA: Objection, calls for
16 speculation.

17 **A. I don't know.**

18 Q. Your testimony is you don't know if prices
19 of pork produced by defendants or coconspirators
20 increased between 2008 to 2018. Is that correct?

21 **A. Correct.**

22 MR. AMARA: Objection, misstates prior
23 testimony.

24 That's not what he said.

25 Q. Mr. Deery, did you testify that you don't

1 know as a matter of fact that the prices of pork
2 produced by defendants or coconspirators increased
3 between 2008 to 2018?

4 **A. It has increased.**

5 Q. It has increased. Was that your answer,
6 Mr. Deery?

7 **A. Correct.**

8 Q. And how do you know that?

9 **A. The receipts I gave to counsel. Again,**
10 **being an observer.**

11 Q. Did the prices of pork produced by
12 defendants or their coconspirators ever decrease
13 between 2008 to 2018?

14 MR. AMARA: Objection, foundation.

15 **A. That's all speculation. I don't know.**

16 Q. We talked about your observations or
17 personal knowledge that prices of pork increased.

18 Do you have any similar observations or
19 personal knowledge that prices of pork decreased
20 between 2008 and 2018?

21 **A. If the prices had decreased?**

22 Q. Correct.

23 **A. No.**

24 Q. When you purchased pork between 2008 to
25 2018 at the grocery store, did you receive a

1 receipt?

2 **A. Yes.**

3 Q. And do you keep those receipts?

4 **A. Most of the time. Yes.**

5 Q. How long would you say you keep those
6 receipts on hand?

7 **A. Days. To make sure that -- I check my**
8 **bank account and then I shred them.**

9 Q. So on average, how long do you have
10 receipts before you shred them?

11 **A. I don't know. A day. There's a lot of**
12 **fraud.**

13 Q. You keep those receipts for about a day or
14 so?

15 **A. Correct.**

16 Q. And has that been your practice since
17 2008?

18 **A. Correct.**

19 Q. Has counsel ever instructed you to keep
20 receipts from your purchases of pork?

21 **A. Mr. Amara?**

22 Q. Or any other attorney?

23 **A. Yes.**

24 Q. When was the first time you were
25 instructed to keep your receipts?

1 **A. I don't recall the exact time. Probably**

2 **three, four years ago.**

3 Q. After you became involved in this lawsuit?

4 **A. From counsel?**

5 Q. Yes.

6 **A. Yes.**

7 Q. Do you recall how soon after you became
8 involved you were instructed to keep your
9 receipts?

10 **A. No. But it was a common practice already.**
11 **I guess some receipts hung around longer too**
12 **because they have coupons on them.**

13 Q. Were there -- sorry. Go ahead.

14 **A. Go ahead.**

15 Q. For the receipts that you would hold onto
16 longer because they had coupons on them, how long
17 would you hold onto those before shredding them?

18 **A. Sometimes a month. That's when the coupon**
19 **expired.**

20 Q. Sure. So if you received the receipts,
21 checked your bank, and then shredded them within a
22 day or so after you were able to confirm they hit
23 your bank and shredded them, do you have a sense
24 for how many receipts, if any, you had between
25 2008 and 2018 when you were instructed to keep

1 your pork purchase receipts?

2 **A. I don't know. I would be speculating on**
3 **my part.**

4 Q. Do you know if you had any?

5 **A. Had any what?**

6 Q. Had any receipts from the 2008-2018 time
7 period?

8 **A. To the best of my ability, I gave my**
9 **counsel what I had.**

10 Q. So is it fair to say that if a receipt was
11 not in the production we received from counsel,
12 then you didn't have it?

13 **A. Yeah. I guess at this time, yes. I could**
14 **probably produce more. That's what I had at the**
15 **time, and I gave my counsel what I had at the**
16 **time.**

17 Q. You said you could produce more. Do you
18 have or do you believe you have more receipts from
19 2008 to 2018 that you haven't produced yet to your
20 attorney?

21 MR. AMARA: Objection, calls for
22 speculation.

23 **A. I produced what I had to the best of my**
24 **ability to counsel at this time.**

25 Q. Have you thrown away any receipts since

1 **A. Number 5?**

2 Q. Yes, please.

3 **A. The response or the top one?**

4 Q. The top is the question. So please just
5 read the question.

6 MR. AMARA: Can we make sure that's
7 reflected on the screen? I'm not seeing it.

8 MS. WALL: You need to scroll down a
9 little bit. Thank you. There you go.

10 **A. "Identify and Describe in detail each**
11 **transaction in which You purchased any pork**
12 **products that You contend was impacted by the**
13 **alleged conspiracy, including (a) the identity of**
14 **all persons or entities from whom You purchased**
15 **any pork products; (b) a description of the**
16 **product(s) you purchased; (c) the amount**
17 **purchased; (d) the prices You paid, including any**
18 **discounts, rebates or promotions you received; and**
19 **(e) the dates of the purchase."**

20 Q. Let's go to page 14, the next page. So
21 your attorney has asserted some objections to that
22 request. But then halfway down, before we get to
23 Interrogatory 6, starting with "Without."

24 **A. "Without waiving the foregoing objections**
25 **and to the extent any individual Consumer**

1 **remembers such specific details, that information**
2 **is included in Exhibit A"?**

3 Q. Yup. That's the sentence I was going to
4 ask you to read. So perfect.

5 So that response is indicating your
6 response to Interrogatory No. 5 that you just read
7 to the extent that any consumers, such as
8 yourself, remember specific details, that
9 information is included in Exhibit A. Correct?

10 **A. Correct.**

11 Q. Okay. Let's take a look at Exhibit A. It
12 should be page 26. And when we get there, we'll
13 scroll to the bottom where Mr. Deery is in each of
14 them.

15 **A. Okay.**

16 Q. All right. And, Mr. Deery, we talked
17 through kind of the lines. You see where your
18 name shows up on this document, Exhibit A.
19 Correct?

20 **A. Yes.**

21 Q. We talked through these places that you
22 purchased and the pork products, some other
23 details that are contained in Exhibit A. Correct?

24 **A. Correct.**

25 Q. Is this a complete answer to the question

1 that you read in Interrogatory No. 5?

2 MR. AMARA: Objection, calls for a legal
3 conclusion.

4 MS. WALL: How does it call for a legal
5 conclusion, Mr. Amara?

6 MR. AMARA: Because these are the
7 purchases that would be then be adjacent with any
8 corresponding damages.

9 Your question is about damages. And so
10 you're calling for a conclusion to determine the
11 scope of purchases that would result in the
12 damages. That's why it's a legal conclusion.

13 MS. WALL: I think if you go back and read
14 Interrogatory No. 5, the question is asking
15 purchases of pork products that were impacted by
16 the alleged conspiracy.

17 MR. AMARA: Correct. With the objection
18 that he read that said that to the extent that the
19 plaintiff remembers.

20 MS. WALL: Right. So that's fair.

21 Q. So, Mr. Deery, to the extent that you
22 remember, is the response under your name for
23 Exhibit A a complete answer to question to
24 Interrogatory No. 5?

25 **A. To the best of my knowledge, yes.**

1 Q. Okay. Thank you.

2 MS. WALL: I do not have anything else for
3 you.

4 MR. AMARA: Okay. Can we go offline?

5 THE VIDEOGRAPHER: The time is 2:47 p.m.,
6 and we are going off the record.

7 (Recess from 2:47 p.m. to 2:49 p.m.)

8 THE VIDEOGRAPHER: The time is 2:49 p.m.
9 We're back on the record.

10 EXAMINATION BY COUNSEL FOR
11 CONSUMER INDIRECT PURCHASER PLAINTIFFS
12 BY MR. AMARA:

13 Q. So, Mr. Deery, my name is, as you know,
14 Abou Amara, and I'm one of the attorneys on behalf
15 of the consumer indirect purchaser plaintiffs.

16 Ms. Wall has completed her deposition, so
17 I'm just going to ask you some brief questions now
18 on what is referred to as "redirect."

19 Just two areas that I just wanted to
20 clarify some of your testimony that you provided
21 to Ms. Wall. So the first really is around the
22 timeline and how you handled receipts once you
23 made purchases.

24 So from 2009 until you joined the case in
25 the fall of 2018, it was your -- did you testify

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1 that it was your practice that you purchased pork,
 2 then threw the receipts away a day or so after?
 3 **A. Correct.**
 4 Q. And those purchases between 2009 or 2008
 5 and before you joined the case were before you
 6 spoke to lawyers about any duty to preserve
 7 documents. Is that correct?
 8 **A. Correct.**
 9 Q. So you were under no duty to keep those
 10 documents. Is that correct?
 11 **A. Correct.**
 12 Q. And so then you joined the case in the
 13 fall of 2018. Is that correct?
 14 **A. Yes.**
 15 Q. And at that time, you don't have any
 16 receipts that are dated pre-June 30th, 2018. Is
 17 that correct?
 18 **A. Yes. That's correct.**
 19 Q. And so once you joined the case in the
 20 fall of 2018, then you -- can you describe how
 21 your practice changed between 2008 to 2018 and
 22 2018, the fall, once you joined the case moving
 23 forward?
 24 **A. Moving forward, I did have that duty to**
 25 **preserve the evidence through my camera. So my**

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1 **iPhone, I would capture the receipt and then send**
 2 **it accordingly to my attorneys.**
 3 Q. So was it your intention by taking
 4 photographs of the receipts before discarding
 5 them, again after June 30th of 2018, it was your
 6 intention to preserve those receipts by taking
 7 photos of them and sending them to your lawyers?
 8 **A. Correct. As soon as I got them.**
 9 Q. And that was done to the best of your
 10 abilities to reach or to meet your duty to
 11 preserve documents?
 12 **A. That is correct.**
 13 Q. Okay. And have you continued to do so in
 14 good faith?
 15 **A. That's correct.**
 16 MS. WALL: Objection, legal conclusion as
 17 to "good faith."
 18 Q. I'll restate the question. Did you do
 19 that to the best of your abilities?
 20 **A. Yes.**
 21 Q. And did you do so seeking to comply with
 22 what your attorneys told you to comply with?
 23 **A. Yes.**
 24 Q. Great. So that's the first topic, kind of
 25 how you handled receipts generally.

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1 The second really goes to where you made
 2 purchases. You testified earlier -- and correct
 3 me if I'm wrong -- that Fargo straddles -- it's in
 4 a metropolitan area but straddles two states, the
 5 state of Minnesota and the state of North Dakota.
 6 Is that correct?
 7 **A. Yes, it is.**
 8 Q. And I believe you testified that -- well,
 9 let me strike that.
 10 Opposing counsel showed you a receipt of a
 11 purchase of pork made in Minnesota. Is that
 12 correct?
 13 **A. Yes.**
 14 Q. And I believe then you testified that
 15 99 percent of your purchases of pork were made in
 16 the state of North Dakota. Is that correct?
 17 **A. Yes, that is.**
 18 Q. And 1 percent of your pork purchases maybe
 19 were in the state of Minnesota. Is that correct?
 20 MS. WALL: Objection.
 21 **A. It is.**
 22 MS. WALL: That's not what he testified
 23 to.
 24 Q. Mr. Deery, can you restate how you
 25 described that ratio earlier when you testified

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1 with Ms. Wall as to the number of purchases or the
 2 percentage of purchases made in North Dakota as
 3 opposed to in Minnesota?
 4 **A. In North Dakota, it was 99 to 100.**
 5 Q. So I just want to make sure I understand
 6 that. Are you saying 99 percent of the pork
 7 purchases you made were made in the state of North
 8 Dakota?
 9 **A. Yes. That's correct. In North Dakota.**
 10 Q. And then just 1 percent of the purchases
 11 you made of pork were in the state of Minnesota.
 12 Is that correct?
 13 **A. Yes.**
 14 MR. AMARA: Okay. With those two complete,
 15 I have no further questions.
 16 MS. WALL: Nothing further from me.
 17 MR. AMARA: And then just for the record,
 18 the consumer indirect purchaser plaintiffs will be
 19 asking for a read and sign on the deposition
 20 transcript here.
 21 THE VIDEOGRAPHER: Okay. If there are no
 22 further questions, the time is 2:54 p.m. We're
 23 going off the record.
 24 (Whereupon the deposition
 25 was concluded at 2:54 p.m.)